

EXHIBIT E

HIGHLY CONFIDENTIAL



Transcript of H. McIntyre (“Mac”) Gardner

Tuesday, June 27, 2023

***United States, et al. v. JetBlue Airways Corporation
and Spirit Airlines, Inc.***

www.TP.One
www.alderonreporting.com
www.accutrancer.com
800.FOR.DEPO (800.367.3376)
Scheduling@TP.One

Reference Number: 129304

1 all the time. It would take several
2 years to replace -- to retrofit our 200
3 plus -- 200 or so aircraft. So I'm not
4 sure -- while that's happening there's
5 more capacity coming into the
6 marketplace. So I'm not sure whether
7 net-net there's less flying capacity
8 overall. But certainly as it relates
9 to our planes over time when that
10 happened, there would be fewer seats on
11 those planes.

12 BY MS. MARKEL:

13 Q. Would you agree that certain
14 price sensitive passengers would not be able to
15 fly as frequently if half of the ULCC capacity
16 in the US were converted to higher cost, higher
17 fare aircraft?

18 MR. COHEN: Objection to the
19 form of the question.

20 THE WITNESS: They would have
21 to -- assuming that they went to
22 JetBlue fares, they would have to pay
23 more, yes.

24 BY MS. MARKEL:

25 Q. Okay. Turning back to the press

1 release, that paragraph continues, "in
2 addition, the conversion of Spirit aircraft to
3 JetBlue configuration will result in
4 significantly diminished capacity on former
5 Spirit routes also resulting in higher prices
6 for consumers."

7 Do you see that?

8 A. Yes.

9 Q. At the time of this press
10 release, did you agree with that statement?

11 A. Yes.

12 Q. Would you -- do you agree with
13 that statement today?

14 A. Yes.

15 Q. To your knowledge, does JetBlue
16 still plan to convert all Spirit aircraft
17 configurations to JetBlue's aircraft
18 configurations?

19 A. I don't know.

20 Q. That paragraph continues,
21 "Finally, we are skeptical about your claims
22 regarding the so-called 'JetBlue Effect'. After
23 receiving the summary output of your economic
24 model from your advisers, Spirit's economic
25 consultants identified reasons to doubt that

1 seen the specifics of it. But based on what I
2 knew at the time, I felt that it was.

3 Q. And why did you view, at the
4 time, the Northeast Alliance to be
5 anticompetitive?

6 A. It was -- they were linked up
7 with American, and I believe the company was
8 a -- I don't know what the words -- a friend
9 testified in the trial, one of our employees,
10 in that trial about, about it. So that was the
11 view of management.

12 Q. And so if you look at the second
13 bullet point here, "at its core the JetBlue
14 proposal represents a high cost, high fare
15 airline buying a low cost, low fare airline
16 with half the synergies coming from reduced
17 capacity and increased fares."

18 Do you see that?

19 A. I do.

20 Q. What do you understand
21 "synergies" to mean in this context?

22 A. Well, higher fares is most of
23 it.

24 Q. So at this point in time, was it
25 your understanding that half the synergies from

1 the deal would come from reduced capacity and
2 increased fares?

3 A. Yes.

4 Q. Do you still agree with that?

5 A. I don't know.

6 Q. Why are you not sure today?

7 A. Over a three-month period from
8 May until July, when we signed the deal, there
9 were lots of changes in the -- in the
10 protections. The original list that you showed
11 me before about our -- call it our wish list of
12 items we needed to do in order to get
13 comfortable. I don't know whether any change
14 has been made to their plan on what to do with
15 the aircraft. Since it's a cash purchase, and
16 we won't have ongoing involvement or be an
17 equity holder, you know, from the board's
18 perspective, that wasn't a concern of ours.

19 Q. At this time what synergies were
20 identified?

21 A. I don't know specifically.

22 Q. Which deal synergies would stem
23 from reduced capacity?

24 A. I don't know specifically.

25 Q. What deal synergies would stem

1 from increased fares?

2 A. If you were selling a seat for a
3 hundred dollars, and then you were going to
4 sell it for 150, that would be a synergy,
5 increased revenue.

6 Q. If JetBlue has not made any
7 changes to their plan with respect to their
8 aircraft, is it your understanding that half of
9 the synergies from the deal would still come
10 from reduced capacity and increased fares?

11 MR. COHEN: Object to the form
12 of the question.

13 THE WITNESS: I suppose so.

14 BY MS. MARKEL:

15 Q. The fourth bullet point here
16 states, "JetBlue's acquisition of Spirit would
17 eliminate a key competitor and a vocal public
18 opponent of JetBlue's anticompetitive NEA
19 deal."

20 Do you agree that Spirit is a
21 key competitor of JetBlue?

22 MR. COHEN: Object to the form
23 of the question.

24 THE WITNESS: We're a competitor
25 for sure.

1 slide, slide 3, ending in Bates 586. The
2 subbullet under the second bullet refers to an
3 experienced aviation economist.

4 Do you see that?

5 A. Yes.

6 Q. Is that a reference to
7 Campbell-Hill?

8 A. I don't know. I assume so.

9 Q. Okay. So turn to slide 6 ending
10 in Bates number 589, which the title of this
11 slide is "Spirit Continues to Be a Check on
12 JetBlue's Fares."

13 At this time in May 2022, did
14 you agree that Spirit was a check on JetBlue's
15 fares?

16 A. Yes.

17 Q. Is that still true today?

18 A. I believe so.

19 Q. Okay. You can put that aside.

20 MS. MARKEL: Tab R.

21 (Document marked for
22 identification as Gardner Deposition
23 Exhibit No. 14.)

24 BY MS. MARKEL:

25 Q. What has been marked as Gardner

1 this time?

2 A. Yes, it would become part of
3 JetBlue and not be independent.

4 Q. And who are the millions of
5 consumers across the US who would be affected?

6 A. Our customers would be affected.
7 Presumably on the other side, you know,
8 JetBlue's customers would be affected. But
9 this was talking about just our customer base,
10 not the total customer base, the flying public.

11 Q. And that would include
12 price-sensitive customers, right?

13 A. It would.

14 Q. And sitting here today the
15 potential transaction would remove -- would
16 still remove the largest ULCC?

17 A. Over time.

18 Q. Okay. And would you --

19 A. It would benefit others but,
20 yes, over time it would.

21 Q. And would you agree that ULCCs
22 have given more consumers the ability to fly?

23 MR. COHEN: Objection to the
24 form of the question.

25 THE WITNESS: Yeah, more than

1 without it, yes.

2 BY MS. MARKEL:

3 Q. And Spirit's price-sensitive
4 customers are more likely to choose a
5 lower-fare option, right?

6 MR. COHEN: Objection to the
7 form of the question.

8 THE WITNESS: Certainly some of
9 them.

10 BY MS. MARKEL:

11 Q. Lower fares are very important
12 to Spirit's customers, right?

13 A. Yes.

14 Q. And amenities are less important
15 to Spirit's customers, right?

16 A. No, they're important as well.
17 As I said before, half of our revenue is from
18 ancillaries. So the point isn't that it's just
19 the fare, they get to buy what they want. So
20 if they have two bags, they pay for two bags.
21 If they have one bag, they pay for one bag. If
22 they don't want a snack or they don't care
23 whether they get on last or they don't care
24 about sitting in middle seat, it gives them the
25 choice to pay the fare that gives them the

1 it was, do you want this transaction
2 that we have with its risks compared to
3 a JetBlue offer with its inherent
4 risks?

5 BY MS. MARKEL:

6 Q. And so at this point in time, is
7 it true that JetBlue was a higher-fare airline
8 that was trying to buy a low-fare airline and
9 raise fares?

10 A. Yes, that's what they had said
11 they were going to do.

12 Q. And when you say "they," are you
13 referring to JetBlue?

14 A. JetBlue had said they were going
15 to convert the Spirit aircraft over time to a
16 JetBlue configuration and raise the fares to
17 JetBlue fares. That's what they had said
18 publicly.

19 Q. And you have no reason to
20 believe that's not what JetBlue intends to do,
21 right?

22 A. I have no idea what they intend
23 to do.

24 Q. Okay. So if you look at the
25 next slide, it says slide 11 out of 45 on the